NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

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NOLLIE LEE MARTIN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Jr., J., of murder in the first degree and was sentenced to death, and he appealed. The Supreme Court held that: (1) the trial court properly excluded three death-scrupled jurors; (2) the trial court did not err by excluding instruction as to the penalty for first-degree murder; and (3) the evidence was sufficient to sustain the imposition of the death penalty.

Affirmed.

1. Jury ⇐108

In prosecution for murder, trial court properly excluded three jurors who would not impose the death sentence under any circumstances.

2. Homicide ⇐311

In prosecution for murder, trial court properly instructed the jury and did not err by excluding instruction as to the penalty for first-degree murder.

3. Homicide ⇐354

Evidence sustained imposition of death penalty on defendant who was convicted of murder in the first degree despite extensive conflicting expert testimony on defendant's mental condition. West's F.S.A. § 921.-141(6)(b, f).

Richard L. Jorandby, Public Defender, and Jerry L. Schwarz and Jon May, Asst. Public Defenders, Fifteenth Judicial Circuit, West Palm Beach, for appellant.

Jim Smith, Atty. Gen., and Robert L. Bogen, Asst. Atty. Gen., West Palm Beach, for appellee.

PER CURIAM.

Nollie Lee Martin was convicted of murder in the first degree of Patricia Greenfield. The jury recommended that the death sentence be imposed, and, after weighing the aggravating and mitigating circumstances, the trial court imposed a sentence of death. Martin's conviction and sentence are before this Court on direct appeal pursuant to article V, section 3(b)(1), Florida Constitution. We have reviewed

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Nollie Lee MARTIN, Appellant,

v.

STATE of Florida, Appellee.

No. 55716.

Supreme Court of Florida.

Sept. 9, 1982.

Rehearing Denied Nov. 4, 1982.

Defendant was convicted in the Circuit Court, Palm Beach County, Marvin Mounts,

the record and considered the ten points on appeal and affirm the conviction and sentence.

Patricia Greenfield was an employee of a Cumberland Farm Food Store in Delray Beach. On June 25, 1977 two men entered the store, robbed it, and abducted Ms. Greenfield. Her body was discovered a few days later on a garbage dump. Investigation led to the arrest of Martin and Gary Forbes for the robbery and murder.

The trial judge correctly summarized additional facts as follows:

> Gary Forbes is an 18-year old high school dropout, recently married, with no criminal record and several juvenile referrals. He was employed at his father's service station with Nollie Lee Martin who had just been paroled from the State of North Carolina several months earlier (after serving almost five years of a sentence of eighteen years to thirty years) for the second degree arson slaying of three (3) human beings.
>
> Gary Forbes tendered a plea of guilty to the Court which was supported by the concurrence of the family of the victim, the police agency involved and the State Attorney's Office. The Court accepted that plea and the defendant Forbes has now been sentenced pursuant to his plea bargain. That matter is covered in a separate order.
>
> The victim was a college student who was temporarily employed in a convenience store. The two men robbed her at knife point of approximately ninety (90) dollars and two cases of beer shortly before closing. They drove her back to Martin's apartment and blindfolded her along the way with Martin's shirt. The sworn testimony and confessions indicate that each man committed forcible sexual battery on the victim at the apartment.
>
> The victim was transported away from the apartment, still blindfolded and under the assurances that she would be released at a remote area. After driving some distance in a rather aimless fashion, the automobile arrived at the vicinity of the Lantana Dump and the defendant, Nollie Lee Martin, walked the victim away from the view of Forbes. According to Forbes, the defendant, Martin, stated that he attempted to strangle or suffocate the victim with the use of a short piece of rope but that she recovered her breath each time that he thought she had succumbed. He then stabbed her several times in the throat. The autopsy revealed that she died of these stab wounds and suggests at least an inference that there was some struggle before the death strokes were administered.

Martin confessed to the killing on July 4 and again on July 11. His defense at trial was insanity. At the sentencing hearing he sought the benefit of the mental mitigating factors of being under the influence of extreme mental and emotional disturbance and that his capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired.[1] He had numerous psychiatric examinations, and conflicting opinions ensued from the doctors examining him. One considered him insane at the time of the murder, but three opined otherwise.[2] At sentencing two felt that he met the statutory mental mitigating circumstances. The reconciliation of these conflicts was the responsibility of the jury and, to the extent it concerned his sentencing responsibilities, the trial judge. When there is competent substantial evidence to support the conclusion reached, their determination is final. *Tibbs v. State*, 397 So.2d 1120 (Fla.1981); *Clark v. State*, 379 So.2d 97 (Fla.1979), *cert. denied*, 450 U.S. 936, 101 S.Ct. 1402, 67 L.Ed.2d 371 (1981); *McNeil v. State*, 104 Fla. 360, 139 So. 791 (1932).

On appeal Martin raises ten issues for our consideration. Four deal with his in-custody statements, one challenges the exclusion of three jurors because they would not impose the death sentence under any circumstance, one challenges the exclusion of cer-

1. § 921.141(6)(b) & (f), Fla.Stat. (1977).

2. There had been a pretrial determination that Martin was competent to stand trial.

tain jail records, three deal with allegedly improper jury instructions, and one challenges the imposition of the death sentence. After reviewing the record, we find no merit in any of the points raised and do not find that any issue warrants or requires specific discussion. We have independently searched the record for error and have found none.

[1, 2] Martin was fully and properly informed as to his rights, which he freely waived in giving the two statements. The presence of the prosecutor in the interrogation room was proper, and the taped statement and testimony clearly show that Martin was not misled or promised anything for giving his statement. The court properly excluded the three death-scrupled jurors. *Downs v. State*, 386 So.2d 788 (Fla.1980). We also find no abuse by the trial court in excluding the jail records. The court properly instructed the jury and did not err by excluding the instruction as to the penalty for first-degree murder. *Welty v. State*, 402 So.2d 1159 (Fla.1981).

By supplemental authority Martin claims relief because of the United States Supreme Court decision in *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Martin was not arrested in his own home, but in the home of a third party who gave his consent to police entry. *Payton* does not apply to Martin's situation.

[3] The jury recommended the death sentence. The judge found five aggravating circumstances, all of which are supported by the record, and presented his reasons therefor.[3] Although there was extensive conflicting expert testimony on Martin's mental condition, the court carefully considered this and concluded that the mental mitigating circumstances did not apply.

This was a well-tried case. It is evident that counsel were well prepared and zealously advocated their positions. The trial judge was deliberate and careful to afford a fair trial to all. The verdict of the jury and the findings of the trial judge are amply supported by the record. The judgment and sentence are affirmed.

It is so ordered.

ALDERMAN, C.J., and ADKINS, BOYD, OVERTON, SUNDBERG, McDONALD and EHRLICH, JJ., concur.

3. The trial judge found that:

(a) The capital felony was committed while the defendant was under sentence of imprisonment, on parole status. On the 18th day of January, 1973, a consolidated Judgment and Commitment was entered in the General Court of Justice, Superior Court Division of the State of North Carolina. It recited that the defendant had appeared for trial upon three charges of Murder and that he had entered a plea of guilty to Murder in the Second Degree in three cases. His sentence was not less than eighteen (18) years nor more than thirty (30) years in the custody of the State Department of Corrections.

(b) The defendant was previously convicted of felonies involving the use or threat of violence to the person. See (a) above.

(d) The capital felony was committed while the defendant was engaged in flight after committing a robbery and rape (sexual battery); it was also committed while the defendant was engaged in the felony of kidnapping.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest inasmuch as the defendant was destroying the chief witness in the person of his victim.

(h) The capital felony was especially heinous, atrocious or cruel.

Supreme Court of Florida

THURSDAY, NOVEMBER 4, 1982

NOLLIE LEE MARTIN, Appellant,	*	CASE NO. 55,716
v.	*	Circuit Court No. 77-1675 CF "S" (Palm Beach)
STATE OF FLORIDA, Appellee.	*	

Upon consideration of the Motion for Rehearing filed in the above cause by attorney for appellant, and response thereto,

IT IS ORDERED that said Motion be and the same is hereby denied, and it is further

ORDERED that Appellant's Application for Stay of Judgment and Mandate is granted and proceedings in this Court and in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida are hereby stayed to and including December 6, 1982, to allow appellant to seek review in the Supreme Court of the United States and obtain any further stay from that court.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

By: Tanya Carroll
Deputy Clerk

TC
cc: Hon. John B. Dunkle, Clerk
Hon. Marvin U. Mounts, Jr., Judge

Craig S. Barnard, Esquire
Richard B. Greene, Esquire
Robert L. Bogen, Esquire

CHAPTER 921

SENTENCE

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon

the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(4) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within 60 days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed 30 days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

History.—s. 237a, ch. 19554, 1939; CGL 1940 Supp. 8663(340); s. 119, ch. 70-339; s. 1, ch. 72-72; s. 9, ch. 72-724; s. 1, ch. 74-379; s. 248, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 79-353.

Note.—Former s. 919.23.